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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,573	11/16/2000	Henryk Taper	TIENSERAFF.2	6030
75	90 06/19/2002			
Norman P Soloway Hayes Soloway Hennessey Grossman & Hage 175 Canal Street Manchester, NH 03101			EXAMINER	
			FAY, ZOHREH A	
			ART UNIT	PAPER NUMBER
	J		1614	
	**		DATE MAILED: 06/19/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. **09/700,573**

Applicant(s)

Examiner

Zohreh Fay

Art Unit **1614**

Taper et al.



The MAILING DATE of this communication appears on the cover sheet with the correspondence address					
	for Reply Optenied Statlitory period for Reply IS SET:	TO EXPIRE 3 MONTH(S) FROM			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.					
- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the					
- If the p	mailing date of this communication If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.				
- Failure	period for reply is specified above, the maximum statutory period will apply and to reply within the set or extended period for reply will, by statute, cause the	application to become ABANDONED (35 U.S.C. § 133).			
•	ply received by the Office later than three months after the mailing date of the patent term adjustment. See 37 CFR 1.704(b).	is communication, even if timely filed, may reduce any			
Status	,				
1) 🗆	Responsive to communication(s) filed on	·			
2a) 🗌	This action is FINAL . 2b) ✓ This action	on is non-final.			
3) 🗆	3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.				
Disposi	tion of Claims				
4) 💢	Claim(s) 21-40	is/are pending in the application.			
4	la) Of the above, claim(s)	is/are withdrawn from consideration.			
5) 🗆	Claim(s)	is/are allowed.			
6) 💢	Claim(s) 21-40	is/are rejected.			
7) 🗆	Claim(s)	is/are objected to.			
8) 🗆	Claims	are subject to restriction and/or election requirement.			
Application Papers					
9) 🗌	The specification is objected to by the Examiner.				
10)□	The drawing(s) filed on is/are	a) \square accepted or b) \square objected to by the Examiner.			
	Applicant may not request that any objection to the de	awing(s) be held in abeyance. See 37 CFR 1.85(a).			
11)	The proposed drawing correction filed on	is: a) \square approved b) \square disapproved by the Examiner.			
	If approved, corrected drawings are required in reply t	this Office action.			
12)	The oath or declaration is objected to by the Examin	ner.			
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a) ☑ All b) ☐ Some* c) ☐ None of:					
	1. Certified copies of the priority documents have	e been received.			
	2. \square Certified copies of the priority documents have	e been received in Application No			
3. X Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).					
*S	ee the attached detailed Office action for a list of the	certified copies not received.			
14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).					
a) \square The translation of the foreign language provisional application has been received.					
15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.					
Attachm	ent(s)				
	tice of References Cited (PTO-892)	4) Interview Summary (PTO-413) Paper No(s).			
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)					
3) X Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3, 7 6) Other:					

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Claims 21-40 are presented for examination.

Claims 22-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22-29 are indefinite as being dependent on the canceled claim 1.

Claim 34 provides for the use of a combination of insulin and an antimetabolite for the treatment of cancer, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 34 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim 34 is rejected under 35 U.S.C. 112 second paragraph as being indefinite. Claim 34 fails to clarify either a composition or method of use intended.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-40 are rejected under 35 U.S.C. 102 (b) as being anticipated by The European Patent Application 0692252. The European Patent Application teaches the use of insulin in combination with an antimetabolite with the claimed DP value for the treatment of cancer.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Fay whose telephone number is (703) 308-4604.

ZOHREH FAY PRIMARY EXAMINER GROUP 1200

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